

STATE OF NEW YORK
STATE TAX COMMISSION

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In the Matter of Petition :

of :

TELMAR COMMUNICATIONS CORP. :

for redetermination of deficiency of :
franchise tax under Article 9-A of :
the tax law for the fiscal year ended :
March 31, 1971. :
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Telmar Communications Corp. having filed petition
for redetermination of deficiency of franchise tax under Article
9-A of the tax law for the fiscal year ended March 31, 1971, and
a hearing having been held in connection therewith at the office
of the State Tax Commission, 80 Centre Street, New York City,
at which hearing Charles H. Levey, Certified Public Accountant,
appeared personally and testified on behalf of the taxpayer,
and the record having been duly examined and considered by the
State Tax Commission,

It is hereby found:

(1) The Corporation Tax Bureau issued a statement of
audit adjustment dated June 15, 1973 and subsequent notice of
deficiency dated September 17, 1973, computed as follows:

Fiscal Year ended March 31, 1971

Schedule B item 6	\$30,243.00
Less adjusted net operating loss deduction	30,143.00
Adjusted entire net income	100.00
Plus officers' salaries of \$49,788.00 less \$15,000.00	34,788.00
Base	34,888.00
Tax at 7½% of 30% of base	784.98
Tax reported	106.25
Deficiency	678.73

(2) The net operating loss carryovers to the fiscal
year ended March 31, 1971, for Federal and State purposes, were
as follows:

<u>Fiscal Year Ended</u>	<u>Federal</u>	<u>New York</u>
March 31, 1969	(\$117,228)	(\$117,228)
March 31, 1970	(116,675)	(116,575)
Total	<u>(\$233,903)</u>	<u>(\$233,803)</u>

(3) The Federal taxable income for the fiscal year ended March 31, 1971, before application of the Federal net operating loss deduction, was \$30,143.00.

(4) Section 172 of the Internal Revenue Code, providing for a net operating loss deduction, reads in part:

"(b) (2) Amount of carrybacks and carryovers.- . . . the entire amount of the net operating loss for any taxable year . . . shall be carried to the earliest of the taxable years to which . . . such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year . . . shall not be considered to be less than zero."

(5) Section 208.9(f) of Article 9-A reads, in part:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four . . . and such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, . . ."

The State Tax Commission hereby

DECIDES:


(A) Of the net operating loss carryovers, only \$30,143.00 was allowed as a net operating loss deduction for Federal purposes, since that was the amount required to reduce Federal taxable income for the fiscal year ended March 31, 1971 to zero. Accordingly, only \$30,143.00 is allowable as a net operating loss deduction for New York State purposes, since Section 208.9(f) of the tax law

Provides that the State deduction shall not exceed the Federal deduction.

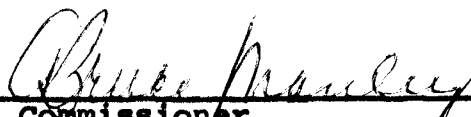
(B) The notice of deficiency is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York
this 20th Day of June 1974.

STATE TAX COMMISSION



President



Commissioner



Commissioner